DIB Bank Kenya Limited v Mire (Insolvency Notice E224 of 2024)
[2026] KEHC 3878 (KLR) (Commercial and Tax) (19 March 2026) (Ruling)

Neutral citation: [2026] KEHC 3878 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

COMMERCIAL AND TAX

INSOLVENCY NOTICE E224 OF 2024

JWW MONG'ARE, J

MARCH 19, 2026

IN THE MATTER OF ABDIAZIZ ALI MIRE

AND

IN THE MATTER OF THE INSOLVENCY ACT(CHAPTER 53 OF THE LAWS OF KENYA)

BETWEEN

DIB BANK KENYA LIMITED ..... CREDITOR

AND

ABDIAZIZ ALI MIRE ..... DEBTOR

RULING

1. The Creditor/ Respondent filed a Statutory Demand on 17th December 2024 seeking Kshs.66,196,137.45/= from the Debtor/Applicant that was served upon him on 27th March 2025. This prompted the Debtor to file the Notice of Motion dated 28th April 2025 seeking to set aside the same relying on grounds set out in his affidavits sworn on 28th April 2025 and 14th August 2025. The Creditor has opposed the application through the replying affidavit of its Manager, Collection & Special Assets Management sworn on 9th July 2025. The application has been canvassed by way of written submissions which together with the pleadings I have carefully considered.

2. The Debtor's application is grounded under inter alia Regulations 16 and 17 of the Insolvency Regulations, 2016 which provides as follows:

    16. Application to set aside statutory demand

        (1) The debtor may, apply to the Court for an order to set aside the statutory demand—

a. within twenty-one days from the date of the service on the debtor of the statutory demand; or

b. if the demand has been advertised in a newspaper, from the date of the advertisement's appearance or its first appearance, whichever is the earlier.

(2) Subject to any order of the Court under regulation 17 (7), time limited for compliance with the statutory demand shall cease to run from the date on which the application is lodged with the Court.

(3) The debtor's application shall be in Form 7 set out in the First Schedule and shall be supported by an affidavit, which shall be in Form 8 set out in the First Schedule.

(4) The affidavit referred to under paragraph (3) shall—

a. specify the date on which the statutory demand came into the debtor's possession;

b. state the grounds on which the debtor claims that it should be set aside; and

c. annex a copy of the statutory demand.

17. Hearing of application to set aside statutory demand

(1) On receipt of an application under regulation 16, the Court may, if satisfied that no sufficient cause is shown for granting the statutory demand, dismiss the application without giving notice to the creditor.

(2) The time limited for compliance with the statutory demand shall commence from the date on which the application is dismissed.

(3) If the application is not dismissed under paragraph (1), the Court shall fix a date and venue for it to be heard, and shall give at least seven days' notice to—

(a) the debtor or, if the debtor's application was made by an advocate acting for him, to the advocate,

(b) the creditor; and

(c) any other person who is named in the statutory demand as the person whom the debtor may enter into communication with in reference to the statutory demand or, if more than one person is named, the first person to be named.

(4) Where the creditor responds to the application, the creditor shall serve the response upon the debtor and the Court at least three days before the date of hearing of the application.

(5) On the hearing of the application, the Court shall consider the evidence before it, and may either summarily determine the application or adjourn it, and shall give such directions as it considers appropriate.

(6) The Court may grant the application if—

(a) the debtor appears to have a counterclaim, set-off or cross-demand which equals or exceeds the amount of the debt or debts specified in the statutory demand;

(b) the debt is disputed on grounds which appear to the Court to be substantial;

(c) it appears that the creditor holds some security in respect of the debt claimed by the demand, and either paragraph (6) is not complied with in respect of the demand, or the Court is satisfied that the value of the security equals or exceeds the full amount of the debt; or

(d) the Court is satisfied, on other grounds, that the demand ought to be set aside.

.....

(9) If the Court dismisses the application, it shall make an Order authorising the creditor to present a bankruptcy application either immediately or on or after a date specified in the Order.

(10) The Registrar of the Court shall, after the Court has made an order under paragraph (8), send a copy of the Order to the creditor. [My Emphasis]

3. The Debtor's case is that the Bank has already filed a separate suit against the principal borrower, Globistics Limited being NRB HCCOMM Case No. No. E919 of 2021, which is still pending before the Court where in the suit, Globistics Limited has filed a Defence, raising substantial issues that directly impact the validity and enforceability of the principal loan and, consequently, the guarantee. Thus, the Debtor argues that it is premature and oppressive for the Creditor to use bankruptcy proceedings to enforce a liability that has not been determined by the court in that suit.

4. He states that the debt is secured by a specific debenture of Kshs.61,440,000/= and joint registration of the motor vehicles between Globistics Limited and the Creditor and that the Creditor's auctioneers already proclaimed and repossessed the motor vehicles on 5th November 2020, to enforce the security. That six of the repossessed vehicles, that is, 3 prime movers: KCY *X, *X, *X; and 3 trailers: ZG 2*, 2*, 2* were later unlawfully seized and sold by a third party, Quickfill Limited, while under the Creditor's control. The Debtor states that the Creditor cannot claim the full amount without accounting for the value of the vehicles it repossessed and lost.

5. The Debtor further contends that the Murabaha-Wakala facility agreement is governed by the principles of Islamic Shariah as interpreted by the Accounting and Auditing Organization for Islamic Financial Institutions Standards (AAOIFI) and the Debtor cites the same to present that the Creditor has a duty to act justly and account for the value of recovered security. That the Creditor's failure to protect the repossessed vehicles violates these principles, rendering its demand for the full amount unjust. It is his further position that the Letter of Offer capped personal guarantees by directors at Kshs.61,440,000.00/=, but the statutory demand is for a higher amount of Kshs.66,196,137.45/=. He further states that the Statutory Demand notice was wrongly filed as a "High Court Commercial Insolvency Notice" (HCOMMIN) instead of the correct "High Court Commercial Bankruptcy Notice (HCOMMBN)" making it defective.

6. In response, the Bank acknowledges the underlying transaction but refutes the Debtor's grounds for setting aside the Demand. The Bank's argument is that the guarantee is valid, the debt is outstanding, and as a secured creditor, it is entitled to pursue multiple remedies simultaneously, including calling in the personal guarantee. It avers that the Debtor, Abdiaziz Ali Mire, is a director of Globistics Limited and that the Creditor issued a facility of Kshs.61,440,000.00/= to the company via a Letter of Offer dated 15th May 2020. As a condition of the facility, the Debtor executed a Deed of Guarantee and Indemnity on 9th July 2020, personally guaranteeing the sum of Kshs.61,440,000/= and a fixed debenture over the motor vehicles was also executed and registered.

7. Globistics Limited defaulted on the loan repayments and the Creditor repossessed and auctioned some of the vehicles with the proceeds being used to reduce the outstanding facility balance. The Bank admits that 3 prime movers and 3 trailers were repossessed by a third party, Mutrix Auctioneers acting for Quickfill Limited and later sold to YAS Investment (K) Limited however, the Creditor argues the vehicles were not in the Bank's possession at the time of the illegal sale but were still in the possession of Globistics Limited or the third party. The Creditor asserts that it did not benefit from the proceeds of this illegal sale and that it has already filed the suit NRB HCOMM Suit No. E919 of 2021 against the relevant parties to challenge this irregular sale and recover its losses.

8. The Creditor confirms that despite the partial recovery from the auction of some vehicles, a significant debt remains outstanding and that the current outstanding amount is Kshs.66,169,137.45/=. The Creditor states that as a secured creditor with multiple remedies, it is entitled to choose which remedy to pursue. The Creditor states that it has opted to demand payment from the guarantor while the separate suit against the third parties regarding the illegally sold vehicles continues.

9. On accounting for proceeds from the sale of the vehicles, the Creditor avers that

   it cannot account for proceeds from a sale it did not conduct and from which it did not benefit. It also claims that the principal borrower never requested a formal statement of accounts. The Creditor asserts that the general rule allows a secured creditor to choose its method of recovery and the existence of a pending suit regarding the security does not prevent the Creditor from exercising its right to call in the guarantee.

10. In summary, the Creditor holds that the Debtor's application has not met the threshold for setting aside a statutory demand under the Insolvency Regulations and prays that the court dismisses it with costs to the Creditor.

11. As submitted by the Debtor, his primary ground for setting aside the Statutory Demand is as per Regulation 17(6)(b) that "the debt is disputed on grounds which appear to the Court to be substantial." A "substantial dispute" is one that is genuine, not frivolous, and supported by credible evidence (see Flower City Limited v Polytanks & Containers Limited (Insolvency Cause 033 of 2020) [2021] KEHC 34 (KLR)]. Going through the pleadings, I find that the Debtor has provided such evidence as he has demonstrated, through the Agreement between Quickfill and Globistics annexed it in his further deposition that the six vehicles repossessed and sold by the third party were never validly offered as collateral to Quickfill and that the Agreement explicitly lists only KCK *Y, KCF *R, and KCF *R as security, which are not the Creditor’s financed vehicles.

12. Further, the Bank admits it did not benefit from the proceeds of this illegal sale,

   however, the core of the dispute is that these vehicles were under the Creditor’s enforcement when they were lost. The Debtor has stated that the Bank cannot claim the full guaranteed amount without first accounting for the value of the security it controlled and lost. I find that the Creditor’s failure to provide a clear statement accounting for this loss keeps the exact amount of the debt in dispute.

13. Regulation 17(6)(c) provides that a demand may be set aside if "...the creditor holds some security in respect of the debt claimed by the demand... and the Court is satisfied that the value of the security equals or exceeds the full amount of the debt." While the Bank asserted that the security value is less than the debt, my position has always been that a secured creditor cannot ignore its security and pursue a guarantor, especially when the realization of that security is incomplete or tainted by irregularities. This court(Mshila J.,) in Home Afrika Limited v Ecobank Kenya Limited [2023] KEHC 1802 (KLR) further emphasized that a creditor must first look to its security and that a creditor may be precluded from pursuing a guarantor if it has exercised its power of sale over the security. The court, while

interpreting section 97(5) of the *Land Act*, found that a chargee is not entitled to compensation from a guarantor if it cannot recover the debt through the power of sale. Although that case involved a sale to the chargee itself, the underlying principle is that a creditor must bear the consequences of its actions in realizing the security. In this case, the Creditor's enforcement led to the illegal sale of part of its security.

14. It is also not lost to me is that the guiding principle of our insolvency regime, as encapsulated in the *Insolvency Act* is that bankruptcy and liquidation are measures of last resort and that all other avenues for debt recovery should be explored before resorting to bankruptcy. Here, the primary avenue is already being explored in NRB HCCOMM Case No. E919 of 2021 where the Creditor is actively seeking remedies against the principal borrower and the third parties for the illegal sale of the vehicles. The outcome of that suit will determine the validity of the principal debt, the value, if any, recovered or recoverable from the illegally sold vehicles and the ultimate shortfall, if any, that the guarantor might be liable for.

15. I therefore take the view and I am in agreement with the Debtor that to pursue bankruptcy against him as the guarantor while this suit is pending is premature, oppressive, and an abuse of the insolvency process.

16. I conclude by stating that the Creditor's right to pursue a guarantor is not absolute, especially when the principal debt and the value of the security are actively contested in court. The Debtor has provided concrete evidence that the security was mishandled, creating a substantial dispute over the guaranteed amount. Proceeding with bankruptcy at this juncture would bypass the ongoing suit and violate the core principle that insolvency is a last resort. Therefore, the Debtor is merited in his application dated 28th April 2025. The Statutory Demand is hereby set aside to allow the primary dispute in NRB HCCOMM Case

    No. E919 of 2021 to be determined. There is no order as to costs.

DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 19TH DAY OF MARCH 2026.

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J.W.W. MONGARE

JUDGE

In The Presence Of

Mr. Kamau for the Creditor.

N/A for the Debtor.

Amos - Court Assistant